

REPORT

DATE: October 10, 2005
TO: Energy and Environment Committee
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SUBJECT: Malibu Creek Watershed: Regulation without Comprehensive Planning

EXECUTIVE DIRECTOR'S APPROVAL:



RECOMMENDATION:

The Energy and Environment Committee recommends that the Regional Council urge the Los Angeles Regional Water Quality Control Board (LARWQCB) to coordinate future water quality measures in the Malibu Creek Watershed with the North Santa Monica Bay Watersheds announced Regional Watershed Implementation Plan and to emphasize collaboration in water quality strategy and decision-making.

BACKGROUND:

Under terms set in a 1999 Federal Consent Decree, the USEPA was required to establish measures to eliminate identified water quality impairments in the watersheds of the Los Angeles Basin within 13 years. (The drafting of these regulations, however, is primarily initiated by the LARWQCB.) Among these impairments were water quality problems in Malibu Creek, a stream that flows into the North Santa Monica Bay.

The level of nutrients was one of these identified problems that required early corrective measures from the Regional Board. Owing to local delays in adopting timely control measures, the USEPA stepped in to create an interim nutrient control plan (otherwise known as a Total Maximum Daily Load or TMDL) which was designed to counteract such nutrient-related water phenomena as algae blooms and other conditions in the Creek. This interim TMDL plan set a winter season numeric limit for total nitrogen of 8 mg/liter for the Creek, a limit that affects discharges into the Creek both by water reclamation facilities and by community stormwater/runoff systems.

The Regional Board, in the meantime, has been developing its own much more restrictive nutrient TMDL plan for the Creek but has not yet released a draft for public review and comment. The Board's nitrogen standard is expected to be 1 mg/liter, a limitation dramatically more restrictive than what is included in the USEPA's nutrient TMDL. Against this backdrop, the Board has already taken steps to implement this expected but not yet approved nutrient TMDL plan by putting the 1 mg/liter nitrogen limit in the proposed National Pollutant Discharge Elimination System (NPDES) discharge permit of the Las Virgenes Municipal Water District's Tapia water reclamation facility.

This unusual permitting action by the Regional Board would require the District to divert not only its highly-treated flows from the Creek in the summer months (a requirement of the USEPA TMDL) but also to divert most of its flows from the Creek throughout the entire year, all at an extremely high cost to the rate payers in the watershed and with uncertain environmental benefits.

LARWQCB's proposal to introduce new nutrient rules by its issuance of a NPDES discharge permit before the release and adoption of its own nutrient TMDL plan has resulted in a variety of public concerns. These concerns include the back door approach to rulemaking, the cost of compliance, considerations of environmental justice, the uncertainty of environmental benefits and the absence of a comprehensive watershed management framework for planning and implementation efforts.

The Concerns Associated with the Proposed Discharge Permit

The District strongly objects to a *back door approach to rulemaking* by which the Regional Board proposes to implement new nutrient rules through its issuance of a discharge permit rather than in accord with its own nutrient TMDL that would be subject to a future public review and adoption process. Communities in the watershed support the District's concerns and have begun to work collaboratively through the North Santa Monica Bay Watersheds Task Force. Others argue that TMDL plans simply have no proper connection with permits and should not be subject to the regulatory enforcement associated with NPDES discharge permits.

If the proposed Tapia discharge permit is adopted by the Board, the *cost implications* for rate payers in the Malibu Creek Watershed are significant. With the USEPA nutrient plan the District has estimated that the cost for compliance at about \$30 million. With the Regional Board's permit, compliance will exceed \$150 million in capital costs and more than \$20 million in annual operating costs. Though much of these costs facilitate diversions of tertiary treated water to the Los Angeles River, they also consider discharges that would be infrequently made to Malibu Creek.

Even though the District's discharges are highly-treated wastewater, a public policy of diverting this water from Malibu Creek to the Los Angeles River has raised certain *environmental justice* concerns. Critics have questioned a policy that would shift wastewater away from an affluent watershed to one which is less influential and even more environmentally challenged.

Another concern expressed by scientific experts is the *uncertainty of environmental benefits*. These evaluators indicate that even with significant diversions of the District's flows there is no certainty that nitrogen related water impairments will be eliminated. This concern recognizes that there are many factors other than nutrient levels that also contribute to algae growth, a feature that is more about water aesthetics than about water quality.

Another key concern is the absence of a *comprehensive, stakeholder-driven framework* that can guide watershed management and investments. This kind of framework has been in a process of development through the efforts of Los Angeles County and cities in the North Santa Monica Bay watersheds, including the participation of Ventura County. This framework offers an integrated setting in which municipal NPDES permits, TMDL implementation plans and septic system management (as required by AB 885) can be coordinated for greater program planning success and cost effectiveness. The range and detail of the Regional Watershed Implementation Plan (to be described in some detail by one of the panelists addressing the Committee) brings reliable balances needed for policy making that can serve the long-term interests of the entire Malibu Creek Watershed and reduce a needless waste of resources.

FISCAL IMPACT: All work related to the recommended staff action is contained within the adopted FY 05/06 budget under 06-075.

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